



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2018-0005]

Pacific Ocean at Naval Base Guam Telecommunication Site, Finegayan Small Arms Range, on the northwestern coast of Guam; danger zone.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise the existing regulations to establish a danger zone at the U.S. Naval Base Guam Telecommunication Site in the Pacific Ocean, Guam. The Navy requested establishment of a danger zone extending over the Pacific Ocean adjacent to the Finegayan Small Arms Range. Establishment of a danger zone would intermittently restrict commercial, public, and private vessels from entering or lingering in the restricted safety zone to ensure public safety during small arms training activities. This danger zone is necessary to minimize potential conflicts between local populace activities and ongoing military training in the subject area.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2018-0005, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2018-0005, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2018-0005. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you may submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we

may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Ms. Karen Urelus, U.S. Army Corps of Engineers, Honolulu District, Regulatory Branch at 671-339-2108.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to revise the regulations at 33 CFR part 334 by establishing a danger zone in the Pacific Ocean. The amendment to this regulation will allow the Commanding Officer of the U.S. Naval Base Guam to restrict passage of persons, watercraft, and vessels in the waters within the danger zone during use of the Finegayan Small Arms Range. The establishment of a danger zone would intermittently restrict commercial, public, and private vessels from entering or lingering in the restricted safety zone to ensure public safety during small arms training activities at the

Finegayan Small Arms Range. This danger zone will be in place as a precautionary measure to protect the public from any potential impacts in firing small arms to the west.

The proposed establishment of this danger zone was considered in the Final Mariana Islands Training and Testing/Overseas Environmental Impact Statement prepared by the Navy. This location is an existing range and meets all of the landside requirements of a small arms range. With limited land on the island, it is not feasible to have the firing range and safety zone completely on land.

Military and Government of Guam law enforcement agencies are required to qualify with their assigned weapon prior to executing their duties. Additionally, other military forces (ships, submarines, expeditionary forces and other combat forces) are required to qualify and maintain their qualifications on the weapons needed to further the execution of their assigned mission. These ranges are not only used by forces assigned to the island, but also deployable military forces (Army, Navy, Air Force, and Marines). The Department of Defense requires frequent firing of assigned weapons to ensure proficiency in the use and operations of assigned weapons.

Currently there are two other ranges on Naval Base Guam that are being used to support weapons qualifications. However, due to the number of units required to maintain weapon qualifications, the two ranges are insufficient. Both ranges are fully booked with commands having to be placed on a waiting list for range availability.

Procedural Requirements

a. *Review Under Executive Orders 12866 and 13563.* Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rule governing the danger zone, which allow any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The danger zone is necessary to protect public safety during use of the small arms range. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule

would have no significant economic impact on the public. After considering the economic impacts of this proposed danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways

For the reasons set forth in the summary above, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.1415 to read as follows:

§ 334.1415 Pacific Ocean, adjacent to the Finegayan Small Arms Range at Naval Base Guam Telecommunication Site, on the northwestern coast of Guam; danger zone.

(a) The area. Coordinates are bounded by the following four points: Point A (13° 34' 57" N; 144° 49' 53" E) following the high tide line to Point B (13° 35' 49" N; 144° 47' 59" E), Point C (13° 34' 57" N; 144° 47' 45" E), and Point D (13° 34' 48" N; 144° 49' 50" E). The datum for these coordinates is NAD-83.

(b) The regulation. (1) Vessels or persons shall expeditiously transit through the danger zone when the small arms range is in use. Vessels shall not be permitted to anchor or loiter within the danger zone while the range is in use. Range activities shall be halted until all vessels are cleared from the danger zone. When the range is not in use, the danger zone shall be open to normal maritime traffic and all activities to include anchoring and loitering.

(2) When the range is in use, the person(s) or officer(s) in charge shall display a red flag from a conspicuous and easily-seen location along the nearby shore to signify that the range is in use and will post lookouts to ensure the safety of all vessels transiting through the area. If the range is in use at night, a strobe light shall be displayed from the same conspicuous and easily-seen location in lieu of flags. The range shall not be used when visibility is equal to or less than the maximum range of the weapons being used at the facility.

(c) Enforcement. The restrictions on public access in this section shall be enforced by the Commander, Joint Region Marianas, and such agencies as the Commander may designate in writing.

Dated: December 6, 2018

Approved:

Thomas P. Smith

Chief, Operations and Regulatory Division

Directorate of Civil Works

[FR Doc. 2018-27028 Filed: 12/12/2018 8:45 am; Publication Date: 12/13/2018]